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Institutional Responses to Child Sexual Abuse  
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Dear Leigh

The actuarial profession recognises the importance of the Royal Commission's work.

Actuaries have significant experience with the design and costing of compensation schemes such as workers compensation and Compulsory Third Party insurance as well as support schemes such as the National Disability Insurance Scheme. These areas of insurance often involve long reporting delays, support broader than monetary compensation and long term care elements. Many of these elements are likely to be relevant to the Royal Commission in considering a redress scheme.

Following a meeting with the Royal Commission on 17 July 2014, the Actuaries Institute set up a working group to provide the Commission with input into the issues and principles they may like to consider for a redress scheme prior to a Roundtable to be held on 5 September.

*Funding and sustainability* are issues where we believe the actuarial profession can add most value to the Commission. However, in order to establish the context and indicate the directions that actuaries would generally support, we have responded to most of your questions.

This paper covers the following areas

1. Objectives of the redress scheme
2. Design principles for the redress scheme
3. Scope, coverage and access
4. Eligibility
5. Benefit entitlements
6. Funding arrangements
7. Sustainability, administration and governance

We look forward to further discussions.

Yours sincerely

A handwritten signature in black ink, appearing to read "Estelle Pearson", with a long horizontal line extending to the right.

Estelle Pearson  
Senior Vice-President



## 1. Objectives of the Redress Scheme

In our experience, successful redress schemes have simple and clear objectives. This allows clarity of focus to inform design, development and implementation. It also sets the base for governance, sustainability and accountability over the period of operation of the scheme.

For example, Workers Compensation schemes that focus on returning injured workers to the workplace generally deliver better outcomes for workers and employers, and tend to offer better value for money compared to schemes that have broader and conflicting objectives. Schemes that have multiple roles or purposes are often less successful.

The Royal Commission will need to consider carefully the purpose of any redress scheme, and once the purpose is clear, to design and implement a scheme that adheres closely to the scheme's objectives. These objectives must be clearly understood by institutions, victims and other stakeholders. Confusion about the objectives of a scheme will likely lead to perceptions of failure, regardless of whether or not the scheme meets its purpose.

The approach taken to future victims is a key question discussed later that is much easier to answer if a clear objective has been articulated. Another example arises if the scheme is intended to also take on a "regulatory" role to prevent future abuse. This would be a good example of confused objectives that risks making the scheme less effective.

Before turning to the range of other issues, we suggest to the Commission that a very helpful case study will be to look at the NDIS and NIIS – both of which are recent and provide relevant lessons. See Appendix for more detail.

## 2. Design principles for the redress scheme

From our experience with injury compensation and support schemes, we believe there are some key principles to consider in the design of a redress scheme for victims of child sexual abuse. The ultimate form of the redress scheme will need to find a balance across the principles. We propose four key principles to consider as follows:

### 2.1. Equity and fairness for victims

*That all victims of child sexual abuse in institutional contexts in Australia be able to access the redress scheme without distinction, to be treated with compassion and respect, and for care, support and redress payments to be provided in a transparent and consistent way.*

To ensure victims are not further traumatised through the application process for the redress scheme, the process should not be adversarial, the victim should not be forced to deal with the institution responsible for the abuse and the person should deal with staff trained to work with victims of crime.

The redress scheme should focus on providing care and support for victims to enable them to get back on their feet, deal with the psychological trauma and to provide practical assistance where victims have demonstrated needs as a direct result of the abuse.



## 2.2. Responsibility for institutions

*That institutions where the abuse occurred have appropriate responsibility, including financial, to provide the redress to victims from that institution.*

This principle becomes relevant in several later sections, especially on funding but also in terms of eligibility and method of delivery of the redress.

Not all institutions will be still in existence and some may not have the ability to pay. Careful consideration will need to be given to funding this gap, bearing in mind this principle.

## 2.3. Efficiency

*That a maximum level of resources is directed to providing care, support and monetary redress to victims, with other costs such as scheme administration and legal costs kept to the minimum necessary to be effective. Provision of care and support should be based on the assessed needs of the victims, on effective and reliable treatment, and value for money.*

This principle is a key factor in deciding on the place of the redress scheme relative to civil litigation and the role of legal representation. Generally, the higher the hurdle of proof to establish eligibility, the lower the efficiency of the scheme. However, an element of eligibility assessment is required to avoid fraudulent claims. The overarching consideration of efficiency should be a key objective of the scheme in order to ensure maximum funding is directed at improving the wellbeing of the victims.

## 2.4. Sustainability and Affordability

*For the redress scheme's funding to be affordable and for the funding mechanisms to be adaptable to a range of scenarios for the future.*

Affordability is clearly a judgement, and the views of victims and institutions will vary. Nonetheless a scheme that cannot be afforded will not survive and will not meet its objective.

As costs of a redress scheme are highly uncertain, the structure of the funding should be flexible enough to change depending on the emerging costs. We return to this issue in the sections on Funding and Sustainability.

A key aspect of sustainability is the governance and risk management framework for the scheme, and this is considered in further detail below.



### 3. Scope, coverage and access

In designing a redress scheme, the scope of who is to be covered, over what time period and how the scheme is accessed will need to be defined. In particular, given the nature of child sexual abuse, the following are considerations:

- a. Who is to be covered by the scheme, including the victim and other family members. Given the abuse can take many years to emerge, there may be an impact on a wide range of people over time, for example where the victim has become unable to support their family.
- b. The period of abuse the scheme is to cover, including whether past events only or both past and future events are included. As abuse can take many years to be reported, at any point of time it is highly likely there will be potential claimants who have not yet been identified.
- c. Ensuring consistent treatment of individuals over time, across states and territories of Australia, and among institutions will be important to ensure equity and fairness for victims, regardless of where the abuse occurred, and where the victim resides, either previously or currently. This will also require any previous compensation received in respect of the abuse to be considered. The National Injury Insurance Scheme (referred to above) provides an example of “minimum benchmarks” relating to eligibility and benefits provided being agreed by Commonwealth and State and Territory governments.

The Actuaries Institute does not have strong views on these questions but from our experience with compensation schemes, we are pleased to put up the following thoughts for consideration. These thoughts are based on options that are more likely to be sustainable than other options:

*Who is covered?* Individuals who have suffered sexual abuse as a child (under age 18) while under the care and control of an Australian institution (religious, educational, sporting or State). The first episode of abuse must have occurred prior to a trigger date – say 31 December 2013. Family members or friends of the victim are not eligible for redress under the scheme.

*Period of abuse to cover?* Any past abuse of living persons, where the first episode of abuse occurred prior to the trigger date. If abuse occurred both before and after the trigger date, then it will be covered. Any case where the first episode of abuse occurs after the trigger date would not be part of the redress scheme. (This is clearly one of the key decision points.)

*Access to the scheme:* Contact with the scheme may be made in a number of ways including website, call centre, letter, email, office visit (the Royal Commission has established a good model of accessibility) or via the relevant institution. An institution may make voluntary disclosure of potential victims, in which case the Scheme will attempt to contact them. Eligibility for redress is covered in Section 4.



## 4. Eligibility

### ➤ Eligibility for Redress

The Actuaries Institute working group suggests that a sustainable and efficient criterion for eligibility would be based on a 'rule of plausibility' as described in the submission from the Australian Psychological Society.

The Scheme will need to gather factual information from the individual, either in written or oral form. The first tool available for the Scheme to decide on eligibility will be the extensive database of historical abuse patterns that will be initiated by the Royal Commission and updated by the Scheme as it collects more information.

The Scheme should be in a position to verify as much information as possible from its own sources, including information obtained in bulk from institutions.

Sometimes, where the database is incomplete, factual information may need to be sought from, or confirmed with, the institution.

In some circumstances it may be necessary to make a psychological assessment of the plausibility of the alleged victim's claims of abuse. The Scheme should have access to suitably qualified and trained psychologists to undertake these assessments. These could be employed by the Scheme or engaged on a consulting basis.

The working group suggests that victims should be free (or encouraged?) to bring a support person to any interviews. Sustainability will be improved if the cost of any support person was not covered by the Scheme, although there are examples of compensation schemes covering the travel costs of support people.

We assume for the purpose of the discussion in this section (see Section 5 on Benefits) that there would be a basic redress package available to any accepted victim which includes a modest fixed amount of monetary redress, with any larger amounts of monetary redress subject to separate assessment of the long term impact of the abuse on the victim.

### ➤ Should the institution be heard on eligibility?

The working group suggests that efficiency will be improved if the institution is not able to argue about the eligibility assessment. There will be times when the scheme will need to seek factual information from an institution, when its existing database does not include sufficient information. The institution, while compelled to provide information, would have no role in assessing eligibility. There are further comments later on other involvement by the relevant institution.

### ➤ Should there be an appeal process?

The working group believes that the principles of natural justice require that there should be an appeal mechanism available to an alleged victim refused eligibility. Based on experience of various compensation and insurance schemes the working group suggests the following two level approach:

1. Internal review by a person independent of the original decision maker
2. A suitable tribunal outside the Scheme, such as an Ombudsman or the AAT.



The external tribunal should be able to establish a suitably empathetic process for hearing appeals, that would permit (but not require) legal representation. We anticipate that there will be a number of victims' support groups available to give knowledgeable and empathetic support for alleged victims, without the need for 'independent legal advice'.

#### ➤ **Eligibility for additional financial redress**

As stated above we have assumed for this purpose that a victim suffering long term damage from the abuse would be entitled to additional monetary redress as well as ongoing care and support. Having observed many assessment procedures in compensation schemes, the working group puts the following proposal for consideration:

- a. The victim would be required to provide a copy of medical records from any treating practitioners, and may provide a contemporary report from a treating practitioner (practitioner broadly defined)
- b. The Scheme will engage an independent practitioner to assess the information and, if the practitioner deems necessary, to examine the victim
- c. The independent practitioner will provide a report to the Scheme with analysis and recommendations
- d. A suitably qualified practitioner employed by the Scheme will consider the evidence from (a) and (c) and make a determination of the category of damage relevant to the monetary redress.

The appeal process could be the same as that above, except that the appeal tribunal should use either a suitably qualified practitioner as its Tribunal Member, or should engage its own suitably qualified practitioner to assist the Tribunal Member.

#### ➤ **The option to pursue civil litigation (issue 7)**

The working group expects this to be one of the more difficult issues to resolve. If the redress scheme is to be most efficient, affordable and sustainable, then there should be no option to pursue civil litigation. We expect that there will have been a number of strong submissions to the contrary from parts of the legal profession. This is a pattern seen in many 'scheme design' or 'scheme reform' situations, and the arguments have been fully canvassed in many other situations.

Parallel examples exist in the provision of Compulsory Third Party (CTP) schemes for injuries from motor accidents. Some schemes, known as "fault" schemes, focus on establishing which party was at fault for accidents and who must therefore bear the cost. Other schemes, known as "no fault" schemes, instead focus solely on the provision of medical treatment, rehabilitation, and monetary compensation to accident victims, regardless of fault. The Accident Compensation Corporation in New Zealand is an example of the latter type of scheme, providing no fault compensation to all victims of accidents no matter how they were caused (including some victims of abuse).

The working group notes that there are pros and cons to either a 'civil litigation' process or an 'administrative scheme' process, but that having the option, or both running in parallel, is likely to lead to worse outcomes.



### Case study – When both at-fault and no-fault schemes co-exist

History has shown that when a no-fault and a common law entitlement co-exist the cost tends to increase beyond expectations. Examples can be found in the Victorian Motor Accident scheme prior to the TAC, and in Workers Compensation arrangements in many jurisdictions including NSW and SA.

In the US when workers compensation was being developed between 1900 and 1915, the most important decision made was the so called 'grand compromise' whereby workers gave up their rights to sue the employer in exchange for a no fault system of compensation.

An administrative scheme, with clear processes and definitions for eligibility and an objective approach to the assessment of monetary redress will be more efficient as the cost of legal providers is minimized. An adversarial system, where the onus is on the victim to prove fault and the extent of damage will incur significantly higher legal costs.

#### ➤ Eligibility following previous compensation (Issue 12)

The working group suggests that a simple rule will be best – if a victim has previously received any monetary redress or compensation, that amount should be deducted from any monetary redress from the Scheme. The Scheme would still provide the care and support package if requested by the victim, unless the previous compensation included sufficient money to pay for care and support. The National Disability Insurance Scheme (NDIS) has a similar provision where compensation from another source is taken into account in assessing the care package to be provided.

## 5. Benefit entitlements

#### ➤ General comments

The Royal Commission will be aware and well informed of existing models of redress schemes, such as those provided by the Synod of Victoria and Tasmania of the Uniting Church in Australia, or the review operated by the Tasmanian Government.

Benefits provided by such schemes include:

- An opportunity for the victim to be heard, with support from trained interviewers
- An acknowledgement of the abuse suffered and an official apology from the institution
- Professional counselling
- Legal advice and support to pursue abusers in civil or criminal matters<sup>1</sup>
- Ex-gratia monetary payments

Though they are the subject of a separate issues paper and roundtable for the Royal Commission, victims of crime compensation schemes also provide similar benefits, and can be considered in conjunction with any redress scheme.

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<sup>1</sup> This support is the only item of the list that the working group does not immediately support. We suggest the Commission consider providing this support by a separate mechanism targeted at the criminal justice issues



In designing the benefits of any redress scheme, the working group suggests that the following general factors be taken into consideration:

- Alignment with the specific needs of victims, as requested by victims. Research has provided ample evidence that schemes providing individually tailored benefits provide better value for money. The NDIS is an example of a compensation scheme where beneficiaries receive an individual plan and accompanying services tailored to their own specific needs. As the Royal Commission is aware from its own experience, many victims may not be seeking financial payment, but an opportunity to be heard, acknowledged and provided with an apology. Such a facility for victims should continue under a redress scheme.
- Clear objectives for the provision of support services such as professional counselling. Schemes are most effective when they are focussed on an outcome for a beneficiary rather than a process. For example, workers compensation schemes that focus on returning injured workers to the work place tend to be more successful than those that simply focus on providing services. Schemes for disabled people work best when the person has their own 'life goal' that the scheme is supporting. Professional counselling which is outcome focussed is likely to meet the needs of victims better than an open-ended provision of services. The duration of any support needs to be considered carefully. Victims may require more than one series of professional counselling as different issues arise throughout their lifetime, and any scheme would need to balance the desired outcome for the victim, and any cap to the provision of psychological support to ensure the sustainability of the scheme.
- Fostering research into best practice treatment. Schemes that monitor and assess the effectiveness of different modes of support – such as different methods of counselling – and actively seek to research and apply best practice are likely to generate better outcomes for victims, and better value for money for the scheme funders. Any redress scheme should seek not just to provide financial payment for counselling. The sheer volume of victims and focus of such a scheme would allow the scheme to become a centre of excellence in the evaluation and provision of support services to survivors of sexual abuse in institutions.
- Involvement of the institution. Any acknowledgement and apology would best come from the institution where the victim was abused. Any scheme would need to work with the institutions to apply a process for the provision of acknowledgement and an apology that is sympathetic to the victim, and not seen purely as an administrative process.

As noted elsewhere, any payment made to victims in a redress scheme would be an ex-gratia payment rather than a direct compensation for the victim's abuse. This would greatly simplify any scheme, reduce the burden of any proof of abuse to a minimal level, allow a larger number of victims to be acknowledged for a given level of funding, and substantially reduce the administrative costs of the scheme. Such an approach is also consistent with the notion that no financial payment could ever rightly compensate the harm suffered by a victim of sexual abuse.

In considering larger payments than a base level, the redress scheme will need to choose between basing the assessment on the level of abuse and the impact on the victim.





### ➤ Service delivery

There are a number of possibilities for service delivery that the Royal Commission can explore including:

1. A single national scheme run by a national institution that provides direct support to victims and makes redress payments;
2. A single national scheme run by a small coordinating body that outsources provision of support and administration of redress payments and provides victims with a choice of outsourced organisation;
3. Multiple schemes (e.g. by state) with a common design, eligibility criteria, and benefit levels, with a small national organisation to audit these schemes against the standards, and to coordinate any common research and best practice recommendations. Victims could have a choice about which scheme they join.

The principle of equity for victims should be used to evaluate these service delivery options. Specifically, each option should provide equivalent benefits and support to victims.

### ➤ Specific issues

**What are the advantages and disadvantages of redress schemes as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts, particularly in comparison to claims for damages made in civil litigation systems? (Issue 1)**

Redress schemes offer the opportunity to provide a uniform, universal and non-adversarial process to provide victims with redress or compensation. A well designed and administered scheme can potentially meet the principles discussed in section 1 better than a common law system.

This is consistent with a general move (albeit slow) to provide accident compensation through statutory “no fault” schemes rather than through civil litigation in Australia.

Civil litigation has the advantage of addressing the specific case, and allowing both sides natural justice. However, any victim seeking compensation through civil litigation faces substantial hurdles, not least of which is funding their case. Further, there is no guarantee of uniform and universal redress through civil litigation. Whilst there is the potential for class action civil litigation, such an approach would likely require litigation funding, and those funders would demand a return.

If the Royal Commission establishes that there has been widespread sexual abuse of children, and a systemic failure of institutions to respond to that abuse, then civil litigation is not likely to be an efficient form of redress. Schemes have the potential to be more efficient, as legal costs are not incurred (or incurred at a much lower level). Schemes can provide faster remedy and certain outcomes for victims, institutions, insurers, and governments.

However, badly designed schemes may not provide victims with adequate redress and effective support, incur wasted administrative costs, be difficult to manage, and grow beyond their intended scope. For example, accident compensation schemes and



victim compensation schemes in Australia have regularly been subject to review and changes, primarily to address faults in design, or unsustainable costs.

**What forms of redress should be offered through redress schemes? Should there be group benefits available to, say, all former residents of a residential institution where abuse was widespread? What should be the balance between individual and group redress? (Issue 3)**

As outlined above, we envisage that a redress scheme would offer both an ex-gratia payment to victims, and professional counselling and support. The principle of equity discussed above would say that victims of sexual abuse should receive benefits regardless of the specific institution where they experienced abuse. Under such a universal and uniform scheme, group redress would not be relevant as all victims would be considered part of the same group.

**What are the advantages and disadvantages of offering compensation through a redress scheme which is calculated on the same basis that damages are awarded by courts in civil litigation systems? Should affordability for institutions be taken into account? If so, how? (Issue 9)**

We recommend that the benefits of a redress scheme be determined in relation to victims needs for acknowledgement, apology and support to recover from the abuse. Whilst civil litigation may have similar objectives, we do not think it is helpful to make a direct comparison with damages awarded by courts, particularly where the Royal Commission establishes that there was widespread sexual abuse.

Some accident compensation schemes provide benefits designed to, for example, return injured workers to the work place, rather than to compensate workers for their injuries through awarding damages.

We are confident that the Commission would find, after undertaking costings, that the basing redress on civil law damages would result in an extremely high cost.

**What sort of support should be available for claimants when participating in a redress scheme? Should counselling and legal advice be provided by any redress scheme? (Issue 11)**

In our view, counselling services – and indeed any services that may assist a victim in addressing their abuse – would be the significant and important aspect of any scheme. As noted above, the scheme would need to decide on the desired outcome of any counselling services, both generally and for individuals, and to either provide or fund services with demonstrated efficacy in assisting victims of sexual abuse. Caps may need to be in place for the amount, duration, and number of repeats of any counselling provided to individual victims, in order to ensure the sustainability of the scheme.

Legal information and advice, particularly support in pursuing criminal charges against abusers, could also be provided by the scheme or by another mechanism. Because criminal justice is the domain of the Police, co-ordination in providing information to Police may be all that the scheme provides. We would not recommend funding legal support for civil litigation, if that option were to remain.



## 6. Funding arrangements

The funding arrangements cover questions 4, 8 and 9 in the RC Redress Schemes Issues Paper 6.

The main principles that need to be considered in relation to the issues arising in funding the redress scheme are:

- Responsibility for institutions (i.e. the level and distribution of funding among institutions);
- Sustainability and affordability of the redress scheme.

There are also efficiency considerations in designing the funding arrangements for the redress scheme.

Funding arrangements - summary of matters to be considered	
Matters to be addressed	Commentary
Sources of funding. That is who should pay for the redress scheme?	<p>The potential sources of funding available are:</p> <ol style="list-style-type: none"><li>Contribution from institutions (see below) related to the cost of benefits paid;</li><li>Existing insurance (considered in the next matter);</li><li>Governments via taxation revenue.</li></ol> <p>The above order reflects the order of priority based on the principles of equity and fairness.</p> <p>Consistent with this principle we suggest that each institution should be financially responsible for redress for victims abused under its care, subject only to their capacity to pay. If the redress scheme covers past victims who have already received benefits then the past compensation paid will be a deduction from the level of funding required.</p> <p>The matters to be considered in assessing the funding from each institution include:</p> <ol style="list-style-type: none"><li>How and which organisation will finance the cost where the institution does not exist or fails to exist at some point in the future. This is a significant issue in compensation for asbestos where many organisations no longer</li></ol>



exist as the incident leading to the disability occurred 40 or more years ago. The options to fund this liability include:

- a. A contribution to be paid by existing institutions. This is the option adopted by the Dust Diseases Board in NSW and more generally in workers compensation schemes.
- b. Funding from governments (federal and state) indirectly from taxpayers. This approach is adopted by existing victim's compensation schemes.
- ii. What is the liability to provide funding for institutions which now exist in a different legal form than when the incident occurred? This may arise from situations where some institutions have been merged or split into different entities or where the previous legal entity is now part of a larger one. The ability to define 'successor institutions' is important;
- iii. Some institutions may not have the financial capacity to pay a fair contribution otherwise they may become insolvent. Frequently it will not be in the best interests of the community for such institutions to be made insolvent and disappear;
- iv. Those institutions that have reported no incidents to date but have the potential for an incident to be reported in future. Given the publicity and public awareness generated by the Royal Commission we expect few institutions will be in this situation. Nevertheless it is possible some institutions will find themselves having an incident reported for the first time and this needs to be considered in funding the cost of the scheme;
- v. The size of past compensation provided to past beneficiaries will impact contributions from each institution as will funding from existing insurance policies;
- vi. Part of the contribution is to fund the cost of administering the redress scheme. Statutory compensation schemes in Australia generally apply a percentage loading on the contributions to fund this expense.

#### Funding from existing insurance policies

Any redress scheme set up will need to ensure current insurance policies will still respond after the scheme is set up otherwise an important source of funding will not be available for the redress scheme.

Many institutions will have had insurance policies of various kinds with various insurers over long periods. It seems reasonable that this insurance cover, if it is legally applicable, should provide one source of funding. There may be those with an expectation that past insurance will provide most or all of the funding, but this is very unlikely to transpire.



There is a series of difficulties in accessing old insurance policies:

- Finding the documentation of the policies (the insurers may not have kept records and the institutions probably haven't either) Finding the insurer – many have disappeared or been merged multiple times;
- Establishing coverage – some policies will be public liability and some will be professional indemnity, and in either case there are many legal uncertainties about whether and how the policies should respond. This problem has been notorious with asbestos disease liabilities and will be similar with child sexual abuse.

The redress scheme could consider obtaining an early lump sum source of funding by arranging to 'commute' or 'cash settle' all relevant past insurance policies. This in itself will not be an easy task, but the advantages are great in terms of obtaining a reasonable contribution to funding, minimizing future legal disputation and allowing the scheme to focus on its real purpose. As an example:

- CSR and NZI. When CSR's common law liability for asbestos disease claims from Wittenoom was established, CSR and its main insurer, NZI, had been in dispute about the extent to which old insurance policies should pay. After more than \$20m had been spent on preliminary litigation and discovery, the parties negotiated a settlement of \$100m. The settlement not only needed to be with NZI but needed to include all its various reinsurers as well.

The legal basis does exist for a once-and-for-all settlement of past insurance policies. It is in the legal form of a Scheme of Arrangement (the benefit of the legal form being that it can bind all parties). It is very common in the UK, and local examples are the 'insolvent schemes' used to liquidate HIH and Newcap Re and the 'solvent scheme' used to commute the run-off of Victory Reinsurance and NRG.

**Amount of funding. That is the total amount of funds required to finance the benefits to be paid to beneficiaries and the costs of managing the redress scheme.**

The total amount of funding for the duration of the redress scheme will depend on:

- The eligibility for access to the scheme including coverage of:
  - Persons who received compensation in the past
  - Whether the scheme will cover just past events or future events as well
- The benefits paid to each person who accesses the scheme;
- The cost of administration of the scheme.



Decisions in respect of the first two matters will determine how many claims and the average cost of the claims. The cost may be divided into:

- Ongoing redress (e.g. care and support services);
- Lump sum redress;
- Costs of administering the scheme.

Providing a total estimate of the funding required for all past events is difficult as illustrated by the Irish redress scheme which underestimated the cost by a factor of around 10 times. The main reasons for the difficulty in estimating the cost are:

- Limited availability and quality of past data. While the RC is collecting data the lack of completeness and veracity of the data is likely to be a significant limiting factor in the analysis and costing;
- Unknown number of people exposed to harm;
- Unknown proportion of people exposed who will make a claim.

The most relevant Australian example of the difficulties of estimating the cost of providing benefits in relation to incidents 20 or more years ago is asbestos for which latest estimates are several times more than estimates made in the early 1990s.

The difficulties encountered in quantifying the cost of a redress scheme will require consideration of flexibility in relation to the funding of the scheme. The James Hardie financing of asbestos claims liabilities is an example of a flexible arrangement of funding. In this example a lump sum of funding was initially committed and that level of funding is adjusted each year as the claims experience evolves.

#### Funding before or after an incident is reported

Assuming only past events are to be covered by the redress scheme there are a number of funding options that can be considered including:

- i. Pre funding
  - a. The full estimated cost of past events is funded. This approach is adopted by all statutory compensation schemes in Australia (not Victims schemes) and the National Injury Insurance Schemes in each state.



	<p>Adopting this approach for the redress scheme is difficult since:</p> <ul style="list-style-type: none"> <li>i. It is very difficult to estimate the full cost as illustrated by other schemes (see item on amount of funding above);</li> <li>ii. This type of funding may result in a significant financial strain on many institutions and negatively impact the financial sustainability of the scheme;</li> </ul> <p>Commutation of existing insurance policies may be one source of pre funding.</p> <ul style="list-style-type: none"> <li>ii. Post funding approaches: <ul style="list-style-type: none"> <li>a. Funding the estimated full cost of incidents one year in advance. This is similar to the funding model adopted by the NSW Dust Diseases Board;</li> <li>b. Only the estimated cash flow for the current year is funded. The NDIA is being set up along these lines and social security is funded using this approach.</li> </ul> </li> <li>iii. A mixture of pre and post funding could be adopted.</li> </ul>
<p><b>Timing of required funding. That is how the funding will be spread over time.</b></p>	<p>There are a number of matters that will impact the timing of contributions to the scheme other than the basis of pre or post funding. Some of the matters are included in 'other possible relevant matters' below. In addition the contributions will be influenced by how the scheme will be financially managed.</p>
<p><b>Data</b></p>	<p>The available of good quality data will be critical to the assessment and ongoing management of the funding arrangements and the redress scheme.</p> <p>Statutory compensation schemes in Australia place a very high priority on the collection and maintenance of detailed high quality data as one of the key parts of administering these schemes and we expect that the same approach will be important for the redress scheme.</p>
<p><b>Impact of redress scheme model on efficiency of funding model</b></p>	<p>The type of redress scheme selected will impact the approach and efficiency of the funding arrangement (and impact the delivery of benefits). The general options and relevant commentary include:</p> <ul style="list-style-type: none"> <li>i. A centralised federally managed and funded redress scheme. By nature this is likely to be the most efficient approach for funding and delivery of benefits;</li> </ul>



	<p>ii. Federally designed but state delivered. This is the chosen design of the National Injury Insurance Scheme. From an efficiency perspective this option will probably not be that much less efficient than the previous option when there are large numbers of beneficiaries receiving benefits. When beneficiary numbers reduce to a relatively low number the previous option would be more efficient. The alternative mechanism of having each state design and manage their own scheme introduces inconsistencies and inefficiencies to a redress scheme;</p> <p>iii. A mixture of one of the above options plus large institutions providing their own funding, delivery of assessment of eligibility, delivery of care &amp; support and compensation to victims. This model is adopted in workers compensation schemes around Australia, whereby large employers are able to self-insure under requirements set by each state workers compensation regulator or by Comcare (there is a high level of consistency between each scheme's requirements). Each scheme regulator closely monitors compliance with the requirements;</p> <p>We note that if a design principle is that a victim will not be forced to deal directly with the institution then this option could not be the only alternative.</p>
<b>Role of government in the administration of the funding</b>	<p>The complexities of the funding issues lend itself to government involvement in organising the funding (but not necessarily providing all of the funding). The form and nature of the role of government depends on the decisions made on a large number of matters not just those related to funding.</p> <p>As a minimum it is to be expected that relevant governments will provide the funding for abuse in institutions under their control.</p>
<b>Other possible relevant matters</b>	<p>Depending on the set up of the scheme the following matters may need to be considered:</p> <ul style="list-style-type: none"><li>• On whose (i.e. governments or private organisations) balance sheet will the liabilities and assets reside?</li><li>• Accounting standards impact on funding, reporting and assessment of liabilities;</li><li>• Taxation matters (e.g. GST, income tax if a private scheme is set up);</li><li>• Investment policy of any fund.</li></ul>





➤ **Relevant case studies of different features and options of funding approaches and issues**

In the above table we refer to a number of case studies that illustrate different options for dealing with the many challenges of funding a redress scheme. Details of these schemes are readily available from public sources.

These are:

- ◆ Statutory workers compensation schemes including self-insurance provisions in each state and the Comcare national scheme
- ◆ NSW Dust Diseases Board
- ◆ James Hardie asbestos fund
- ◆ National Disability Insurance Scheme
- ◆ National Injury Insurance Scheme in each state
- ◆ Examples of commutation of insurance arrangements;
  - NZI/CSR asbestos
  - Commutation of reinsurance contracts for HIH, Newcap Re solvencies.

## **7. Sustainability, administration and governance**

➤ **Sustainability - Management of the funding arrangement over time.**

There are well established approaches adopted for the management of funding of statutory compensation schemes in Australian that are equally relevant to the redress scheme. A very brief summary of the important components of the management of schemes include:

1. At least annual updates of the estimated scheme liabilities and cash flow. Best practice is for estimated scheme liabilities to be reassessed every 6 months.
2. At least annual updates of contributions to be paid by institutions in total and for each one
3. Regular cash flow projections are normally considered on a more frequent basis (monthly or weekly)
4. Frequent and regular monitoring of the claims experience, contributions and investment returns. This is important as it gives insight into the financial progress of the redress scheme and indicates when management intervention is needed.
5. Budgeting and planning.

Collecting and maintaining detailed claims experience and also a data repository for institution contributions is essential for the proper management of the redress scheme.



## ➤ Administration

In order to limit costs, clear guidelines for eligibility and access to the scheme will need to be established. And central to that will be the burden of proof required for the scheme to be satisfied that the alleged abuse took place. The size and duration of benefits payable will also impact on the costs of the redress scheme. And as these costs emerge over time, it is important for data to be captured and monitored so that the scheme is informed about its own experience.

At this stage the working group is making only limited comments on scheme administration.

The administering body needs to be independent and professionally staffed. The principle of 'efficiency' is key for administration, and the administration body needs to be accountable for its efficiency in balance with its other objectives.

Technology is a key to efficiency in today's environment. A lot can be done with a relatively modest investment.

Governance is one of the most important factors in design that reduces long term risk. The body should have a Board of Directors that is in the nature of a 'commercial' Board. Experience has shown that a 'stakeholder' Board is less likely to support sustainability. Accountability can be improved with a commitment to regular reporting.

A transparent process of actuarial control will also be a vital part of the administration process (see earlier section on Funding).

## ➤ The importance of data

At several points during this note we have referred to the importance of data. The working group urges the Commission to give priority to data in any recommendations it makes regarding a redress scheme. Good data has significant benefits in:

- ◆ Making initial cost estimates for the scheme and various options
- ◆ Ensuring institutions are held responsible for funding the relevant victims
- ◆ Operational efficiency
- ◆ Performance monitoring
- ◆ Sustainability, through an actuarial control cycle process.



## Appendix

## Case Study National Disability Insurance Scheme and National Injury Insurance Schemes

### **The National Disability Insurance Scheme**

*The National Disability Insurance Scheme (NDIS) was established via legislation passed in March 2013 following a Productivity Commission report delivered in August 2011. The NDIS is designed to enhance the quality of life and increase economic and social participation for people with disability.*

*When fully operational (currently predicted to be 2019) the NDIS is expected to provide care and support for over 400,000 Australians living with disability.*

*The NDIS is to be funded via Commonwealth and State Government Funding. A part of this funding comes from an increase in the Medicare Levy from 1.5% to 2.0% from 1 July 2014. Agreements have also been reached between the Commonwealth and most States and Territories in relation to operational and funding details for the roll-out of the National Disability Insurance Scheme.*

*The NDIS is administered by the National Disability Insurance Agency which has been established under Commonwealth legislation, the National Disability Insurance Scheme Act 2013 (NDIS Act) and is governed by a Board. The Standing Council on Disability Reform, a Ministerial Council made up of Treasurers and Ministers responsible for disability from the Commonwealth and each State and Territory, is the decision-maker on the National Disability Insurance Scheme policy issues.*

*The NDIS provides a range of care and support services to eligible Scheme participants. These include personal care, assistive technology, home and vehicle modifications, prosthetics and supports for employment, vocational training and higher education as well as some other categories. Generally speaking, the NDIS does not fund primary health services.*

*The NDIS has been established based on insurance principles (rather than social welfare principles) and is predicated on an actuarial control cycle.*

*Further information in relation to the NDIS and NDIA is available at <http://www.ndis.gov.au/>*

### **The National Injury Insurance Scheme**

*The National Injury Insurance Scheme (NIIS) is a federation of state based no-fault schemes providing lifetime care and support for people who have sustained a catastrophic injury as a result of an accident. The Productivity Commission which also recommended establishment of the NIIS contemplated four primary types of accidents: motor vehicle accidents, workplace accidents, medical accidents and general accidents (occurring in the home or community).*

*As of August 2014 States and Territories have agreed to "minimum benchmarks" (or national standards) for Motor Vehicle accidents. Each State or Territory must comply with these minimum benchmarks to deliver the NIIS from 1 July 2016. The minimum benchmarks relate to eligibility criteria to the NIIS as well as the care and support provided by the NIIS.*



*In some States (Victoria and NSW) existing schemes already met the minimum benchmarks for Motor Vehicle accidents and no change was required. South Australia and the ACT have established new schemes to meet the minimum benchmarks for Motor Vehicle accidents.*

*If a State or Territory chooses not to establish a separate scheme meeting the minimum benchmarks individuals who are catastrophically injured in that State or Territory will receive their care and support through the NDIS.*

*As at August 2014 the Commonwealth Government as well as State and Territory governments are working on minimum benchmarks for individuals who are catastrophically injured in other accidents (workplace accidents, medical treatment accidents and general accidents).*

*Further information in relation to the NIIS is available at <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme>.*

## About the Actuaries Institute

As the sole professional body for actuaries in Australia, the Actuaries Institute represents the position of its members to government, the business community and the general public. We are committed to providing independent and expert advice on public policy issues where there is uncertainty of future financial outcomes. As a professional body, the Institute holds the 'public interest' or 'common good' as a key principle in developing policy. Our contributions to public policy are guided by the following principles:

- Individuals should be given fair treatment.
- The need to take a long-term policy view, with appropriate transitional arrangements.
- Ensure that consequences of risk-taking behaviour are borne by the risk-taker.
- Public sector involvement where the market does not meet societal needs.
- Clear and reliable information available for decision-making.

Actuaries evaluate risk and opportunity – applying mathematical, statistical, economic and financial analyses to a wide range of business and social problems. Actuaries work across insurance, superannuation, wealth management, investments, health financing, banking and government. The practice area of most relevance to the Royal Commission is General Insurance actuaries. General Insurance actuaries are responsible for the estimation of financial reserves for claims that have occurred and outstanding and in some circumstances are not yet reported. General Insurance Actuaries are also involved in pricing, capital modelling and risk management of personal motor and household insurance, commercial insurance, workers compensation and other long tail business.

The Actuaries Institute convened a small working group to respond to the request from the Commission. The response does not necessarily represent the views of all members of the group or their employers. Given the short time-frame it has not been through the full due process for public policy submissions by the Institute.